IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1784 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TNT OVERSEAS IMPEX

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1784 of 2005
MR SN THAKKAR for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1
NOTICE SERVED for Respondent No. 2
DS AFF.NOT FILED (N) for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 21/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. Heard Mr.S.N.Thakkar, learned Advocate for the petitioners and Mr.J.M.Malkan for the respondents. In light of the fact that the facts are not in dispute and the controversy is very limited, the matter is taken up for final hearing and disposal. Rule.

2. Mr.Malkan waives service of rule. This petition has been moved praying for following reliefs.

" (A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondent no.3, his officers, servants and agents to forbear from initiating and/or concluding any proceedings for auction and/or delivery of the confiscated polyester chips being the consignment of 108.02 MT;

(B) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct the respondent no.3, their officers, servants and agents to forbear from initiating and/or concluding any proceedings for auction and/or delivery of the confiscated polyester chips being the consignment of 108.02 MT;

(C) An ex-parte ad interim relief in terms of prayer (B) may kindly be granted;

(D) Such other and further relief as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted; "

3. When the Order-in-Original dtd.27th November, 2003 (Annexure-A) came to be made by respondent no.3 he directed confiscation of various goods which could be released on payment on redemption fine. One of the items was 108.02 MT of Polyester Chips Semi-dull Raw White Filament Grade valued at Rs.54,52,320/-. The petitioner was offered option to redeem the goods on payment of redemption fine of Rs.6 lacs only and on payment of appropriate duty of customs at the time of clearance. At the same time, Customs duty amounting to Rs.1,11,41,840/was levied alongwith penalties. The petitioners went in appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and sought stay of recovery. CESTAT made an order on 15th July, 2004 directing pre-deposit of a sum of Rs.2 Lacs to be made by

one of the partners after considering that in light of adjustment already made there was sufficient compliance by the Firm. It is the say of the petitioner that the said order was not received. In the meantime CESTAT had dismissed the appeal on the ground of noncompliance.

4. On 30.12.2004, respondent no.3 wrote to the petitioners stating that confiscated goods are proposed to be auctioned and invited objections to the proposed auction within 15 days. It is specifically averred in the petition that though the said communication mentions (left top corner) that it was dispatched by Registered Post A.D. in fact the petitioner received the same by ordinary post only on 27.01.2005. This is also stated in its reply dtd.27.01.2005 (Annexure-F). Based on this averment notice was issued and the respondents have filed affidavit-in-reply dtd.24th February, 2005. The petitioner has also tendered affidavit-in-rejoinder dtd.16th March, 2005.

5. When the matter came up for hearing on 1st April, 2005 the Court had directed the respondents to explain the factual position in light of the averments made in the petition and the affidavit-in-rejoinder and in absence of any averments in the affidavit in reply already filed to controvert the said averments. In the affidavit-in-reply it is stated vide paragraph no. 3(b) that letter dtd.30.12.2004 was sent to the petitioner informing about the proposed auction and the petitioners' reply dtd.27.01.2005 " was received on 03.02.2005 after the tenders were already opened."

6. In this context, Mr.Malkan has very fairly stated that respondent no.3 in his communication addressed to his counsel accepted the fact that letter dtd.30th December, 2004 was dispatched by ordinary post and not by registered post acknowledgment due.

7. In light of the aforesaid factual position if communication dtd.30th December, 2004 is taken into consideration, the said communication does not state as to from what point of time, the period of 15 days is to be reckoned. In case the same is to be reckoned from the date of receipt of the said letter it is apparent that the letter having been received by the petitioner on 27.01.2005, and the petitioner having replied on the same day, the period of 15 days was not over when the reply was received by respondent no.3 on 3rd February, 2005. If, on the other hand it is contended on behalf of the respondents that the period of 15 days is to be calculated from the date of the communication it is

apparent that the said period had already expired even before the letter was received by the petitioner. Hence, in any event, the said communication did not provide any opportunity to the petitioner to meet with the case of respondents or raise any objection qua the proposed auction. In the facts and circumstances of the case, there is clear violation of principles of natural justice. The petition is therefore required to be allowed on this limited ground without entering into the merits of the controversy between the parties.

8. During the course of hearing, Mr. Malkan has stated on instructions, that though the auction has taken place the goods have not been delivered to the highest bidder and only earnest money and possibly the first instalment has been received from the highest bidder. In the aforesaid circumstances, respondent no.3 is directed to return the amount received from the highest bidder as the entire auction was vitiated. Accordingly, the entire auction proceedings are quashed and set aside.

9. Needless to state that it will be open to the respondent authorities to initiate fresh auction proceedings in accordance with law and after according full and adequate opportunity to the petitioner either to redeem the goods in accordance with law or participate at the auction if the petitioner so desires. It will also be open to the petitioner to raise all contentions that may be available to the petitioner on facts and in law and the Court expresses no opinion on merits of the controversy between the parties.

10. In the result, the auction proceedings to the extent they are conducted are hereby quashed and set aside in relation to 108.02 MT confiscated Polyester Chips.

11. The petition is accordingly allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

12. It will also be open to the petitioner to move CESTAT in relation to restoration application already filed before CESTAT and seek appropriate orders in accordance with law.

13. At the time of issuing notice on 11th February, 2005, the petitioners were directed to deposit a sum of Rs.5 Lacs by this Court. The petitioners have, it is stated, complied with the said directions. The said amount shall be appropriated by the respondent authorities towards the outstanding due amount,if any,

and shall be subject to the final outcome of the appeal, if restored.

(D.A.MEHTA, J.)

(H.N.DEVANI, J.)

21.04.2005
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